

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JOSIE MCCORMICK
Claimant

APPEAL NO: 16A-UI-06989-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCANINCH CORP
Employer

OC: 12/27/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 16, 2016, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 13, 2016. The claimant participated in the hearing. Dave Stitz, Vice-President of Finance, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time seasonal laborer for McAninch Corp. from March 12, 2015 to April 4, 2016. He was discharged following a work-related back injury April 1, 2016.

The claimant injured his back at work April 1, 2016 but did not report the injury to the employer. When he woke up April 2 and 3, 2016, he was unable to get out of bed. He texted his foreman, Jason Jamison, and told him he injured his back and would not be at work. Mr. Jamison instructed the claimant to keep him updated on his status and that he would need a doctor's note to return to work. The claimant saw his physician and was referred to a specialist where he was diagnosed with a bulging disc. The claimant texted Mr. Jamison two more times the week of April 4, 2016. On April 11, 2016, Mr. Jamison called the claimant and notified him his employment was terminated because he had not contacted Mr. Jamison every day during his absence. The claimant believed that Mr. Jamison understood the situation and that he would be gone at least several days. He thought Mr. Jamison wanted him to call periodically with updates when he told the claimant to keep him updated and consequently he did not need to contact him every day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant indicated he notified the employer he injured his back and would not be in three of five days the week of April 4, 2016. Neither the employer nor the claimant could state which dates the claimant called/texted to report his absences. The claimant believed Mr. Jamison was aware he would be absent for a period of time due to his back injury. Mr. Jamison did not participate in the hearing, however, so it is difficult to know when the claimant did or did not call/text that week and whether Mr. Jamison knew the claimant would be absent for a long period of time, thus eliminating the need to call every day. Mr. Jamison told the claimant he needed to provide a doctor's excuse before he could return to work. Consequently, the claimant did not give the employer a doctor's note because he had not yet been released to return to work as of the date Mr. Jamison notified him of his termination. Because the final absence was related to injury, and the employer cannot state with certainty whether the claimant reported his absence April 8, 2016, the employer has not met its burden of proving the final absence was unreported or that the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 16, 2016, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/can